



**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A
SUSPENDED MEMBER OF THE
STATE BAR OF ARIZONA,**

**JOSEPH S. DIDIO,
Bar No. 019738**

Respondent.

Nos. 07-1910, 08-0039, 08-0120,
08-0138, 08-0158, 08-0177, 08-0187,
08-0195, 08-0196, 08-0206, 08-0207,
08-0208, 08-0214, 08-0301, 08-0322,
08-0386, 08-0379, 08-0517, 08-0555,
08-0694

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND RECOMMENDATION**

(Assigned to Hearing Officer 9R,
Robert J. Stephan, Jr.)

I. PROCEDURAL HISTORY

The State Bar filed its complaint in this matter on August 1, 2008. A Notice of Service of Complaint by Mail was filed on August 5, 2008, showing that the complaint was served on Respondent by certified mail/restricted delivery and regular first class mail to Respondent at his address of record. Respondent failed to file an answer or otherwise respond to the State Bar's complaint. The Disciplinary Clerk entered Notice of Default on September 2, 2008. Respondent failed to file an answer or otherwise respond. The Disciplinary Clerk entered default in the matter on September 23, 2008. An aggravation/mitigation hearing was held on November 3, 2008. Respondent did not appear.

1 **II. FINDINGS OF FACT**

2 As Respondent failed to file an answer to the State Bar's complaint, or
3 otherwise defend, all allegations contained therein are deemed admitted by
4 default.
5

6 1. At all times relevant, Respondent was a lawyer licensed to practice
7 law in the state of Arizona having been first admitted to practice in Arizona on
8 April 24, 2000. Respondent was placed on interim suspension by order of the
9 Supreme Court dated March 18, 2008.
10

11 **COUNT ONE (File no. 07-1910/Montoya)**

12 2. On or about December 7, 2004, Sandra and Julian Montoya ("the
13 Montoyas") obtained a judgment against Amanda and Cathy Fransen
14 ("defendants") in the Yuma County Justice Court, Precinct One, in Case Number
15 J1401CV200400646.
16

17 3. The Montoyas, on or about December 28, 2004, recorded a lien in
18 the amount of the judgment against property owned by Cathy Fransen with the
19 Yuma County Recorder.
20

21 4. On or about September 28, 2005, the Montoyas retained Respondent
22 to assist them in collecting the judgment.
23

24 5. The Montoyas, during the course of Respondent's representation,
25 paid him \$4,467.25.

1 6. Although Respondent noticed several Judgment-Debtor
2 examinations during 2005 and 2006, the defendants failed to appear at any such
3 examination.
4

5 7. Notwithstanding the valid recorded lien on Cathy Fransen's
6 property, she subsequently sold the property to an unnamed buyer.
7

8 8. The Montoyas' lien was not satisfied in the sale.
9

10 9. When the Montoyas learned of the sale of the property, they
11 informed Respondent of the sale.
12

13 10. Although Respondent was informed of the sale, and the failure to
14 satisfy the lien held by the Montoyas, Respondent took no action in the matter.
15

16 11. The Montoyas informed Respondent of the name of the person who
17 had purchased the property, but Respondent took no action against Cathy
18 Fransen or the purchaser to pursue payment on the Montoyas' behalf.
19

20 12. During the course of his representation of the Montoyas,
21 Respondent promised to take actions to collect their judgment but did not do so.
22

23 13. After receiving the Montoyas' charge against Respondent, the State
24 Bar of Arizona ("State Bar") commenced a disciplinary investigation pursuant to
25 Rule 54(b), Ariz.R.Sup.Ct.
26

27 14. During the course of the State Bar's investigation, by letter dated
28 March 5, 2008, sent to Respondent at his address of record, the State Bar
29

1 requested that Respondent provide additional information Respondent's client
2 trust account in connection with the Montoyas' matter.

3
4 15. Respondent failed to respond.

5 **COUNT TWO (File no. 08-0039/Harmon)**

6 16. Respondent was retained, in early 2007, to represent Pinnacle
7 Healthcare ("Pinnacle") in collections matters, and did so in numerous cases.

8
9 17. Respondent, on a monthly basis, transmitted to Pinnacle, funds he
10 had collected on their behalf, along with billing statements.

11 18. On or about December 28, 2007, Tami Harmon ("Ms. Harmon"), a
12 physician's assistant and part owner of Pinnacle, received a telephone call from
13 an unnamed person at Respondent's firm informing her that Respondent's
14 practice was closing.

15
16 19. Ms. Harmon had received no prior information from Respondent
17 that he might be closing his practice.

18
19 20. Ms. Harmon was advised to come to Respondent's office to pick up
20 Pinnacle's files.

21 21. Ms. Harmon did so within approximately one day, and found
22 Respondent's office empty but for boxes, furniture pushed up against the wall; it
23 appeared to Ms. Harmon that Respondent's practice had already closed.
24
25

1 22. Although Ms. Harmon was able to retrieve all or most of Pinnacle's
2 files, she was unable to determine, based on the disorderly condition in which
3 she found Pinnacle's files, what work Respondent had done on collection matters
4 for Pinnacle during the month of December 2007.
5

6 23. Ms. Harmon was also unable to determine what, if any, funds were
7 collected by Respondent on behalf of Pinnacle during the month of December
8 2007.
9

10 24. Ms. Harmon was also uncertain of her ability to timely employ new
11 counsel to perform the work for which Respondent had been hired.
12

13 25. Ms. Harmon, on Pinnacle's behalf, contacted the State Bar on or
14 about January 4, 2008, in connection with Respondent's abandonment of
15 Pinnacle's cases.
16

17 26. By letter dated January 17, 2008, sent to Respondent's address of
18 record and to an alternate address, the State Bar advised Respondent of Ms.
19 Harmon's charge and instructed Respondent to respond within 20 days of the
20 date of the letter.
21

22 27. Respondent failed to respond.
23

24 28. By letter dated March 4, 2008, sent to Respondent's address of
25 record, as well as to an alternate address, the State Bar reminded Respondent of

1 his obligation to respond to the inquiry of the State Bar and was reminded that
2 his failure to do so was, in itself, grounds for discipline.

3
4 29. Respondent was instructed to respond within ten days of the date of
5 the letter.

6 30. Respondent failed to respond.

7 **COUNT THREE (File No. 08-0120/Andraschko)**

8
9 31. On or about August 15, 2007, Respondent was paid \$750.00 to
10 represent Olde World Village Home Owner's Association ("HOA").

11 32. The HOA and or the HOA's President Melvin Andraschko ("Mr.
12 Andraschko") provided documents to Respondent pertaining to the HOA's case
13 against John and Donna Warner.
14

15 33. As of October 13, 2007, \$470.00 of the \$750 initially paid to
16 Respondent for the representation remained, Respondent having previously
17 billed the HOA for \$280.00 in legal services.
18

19 34. On or about January 23, 2008, Mr. Andraschko filed a charge
20 against Respondent with the State Bar, requesting that Respondent return the
21 HOA's documents and \$470.00 balance.

22 35. By letter dated February 13, 2008, sent to Respondent at his address
23 of record and an alternate address, the State Bar advised Respondent of Mr.
24
25

1 Andraschko's allegations and instructed him to respond within 20 days of the
2 date of the letter.

3 36. Respondent failed to respond.
4

5 37. By letter dated March 11, 2008, sent to Respondent at his address of
6 record and an alternate address, the State Bar reminded Respondent of his
7 obligation to respond and that his failure to do so, in itself, could be grounds for
8 discipline.
9

10 38. Respondent was given ten days in which to respond.

11 39. Respondent failed to respond.
12

13 **COUNT FOUR (File No. 08-0138/Savage)**

14 40. On or about January 25, 2008, the State Bar received a charge from
15 Mary E. Savage ("Ms. Savage").

16 41. Ms. Savage's charge alleged, among other things, that Respondent
17 had not acted with diligence during his representation of Ms. Savage; had
18 engaged with others in a fraud upon the court; had not followed Ms. Savage's
19 wishes and acted without her authority and had made derogatory statements
20 about Ms. Savage.
21

22 42. By letter dated February 12, 2008, sent to Respondent at his address
23 of record and an alternate address, the State Bar advised Respondent of the
24
25

1 charge filed by Ms. Savage and instructed Respondent to provide a response no
2 later than 20 days of the date of the letter.

3 43. Respondent failed to respond.

4 44. By letter dated March 11, 2008, sent to Respondent at his address of
5 record and an alternate address, Respondent was reminded of his obligation to
6 respond and cooperate with the State Bar's investigation and that failure to do so
7 was, in itself, grounds for discipline.
8

9 45. Respondent was instructed to respond within ten days of the date of
10 the letter.
11

12 46. Respondent failed to respond.
13

14 **COUNT FIVE (File No. 08-0158/Myers)**

15 47. In or about November 2007, Myrtle Myers ("Ms. Myers") contacted
16 Respondent about possible representation in a wrongful termination action
17 against Ms. Myers' former employer.
18

19 48. Ms. Myers paid Respondent a \$250 fee for an initial consultation,
20 which was held on or about November 8, 2007.

21 49. At the consultation, Respondent instructed Ms. Myers to take
22 several actions, including drafting letters to obtain information about the
23 circumstances of her termination; Respondent stated that he would review the
24 letters before they were mailed.
25

1 50. Respondent informed Ms. Myers that she had 180 days after
2 termination to file her claim; this meant Ms. Myers' claim had to be filed by
3 December 29, 2007.
4

5 51. It was agreed that Ms. Myers would send the drafted letters to
6 Respondent by e-mail and that he would promptly make any necessary changes.
7

8 52. Ms. Myers e-mailed one or more drafts to Respondent on or about
9 November 8, 2007; Respondent did not respond to Ms. Myers' e-mail until
10 November 14, 2007.

11 53. Ms. Myers e-mailed additional drafts to Respondent for his review
12 on or about November 14, 2007.
13

14 54. Respondent failed to respond to Ms. Myers' e-mail.

15 55. In the days between November 19, 2007, and November 23, 2007,
16 Ms. Myers made numerous telephone calls to Respondent, but was unable to
17 contact him, and left voice mail messages for Respondent each time she called.
18

19 56. Respondent failed to respond to Ms. Myers' messages.

20 57. Ms. Myers requested an appointment with Respondent in a
21 telephone call to Respondent's staff on or about November 27, 2007.
22

23 58. On or about December 3, 2007, Respondent's staff instructed Ms.
24 Myers to bring \$1,500 to Respondent's office and that after she had made
25 payment, an appointment would be scheduled with Respondent.

1 59. On or about December 4, 2007, Ms. Myers paid Respondent \$1,500,
2 in cash, to represent her and received a receipt for those funds. No appointment
3 with Respondent was scheduled.
4

5 60. Throughout December 2007, Ms. Myers placed numerous calls to
6 Respondent's office requesting that she be scheduled for an appointment with
7 Respondent.
8

9 61. Respondent did not return any of Ms. Myers calls; no appointment
10 was scheduled for Ms. Myers.

11 62. Ms. Myers became increasingly concerned about the lack of any
12 communication from Respondent about her matter, particularly as the deadline
13 for filing her action was quickly approaching.
14

15 63. On or about December 21, 2007, Ms. Myers was informed by
16 Respondent's staff that he had drafted a notice of claim in her matter and she was
17 asked to approve it.
18

19 64. Ms. Myers approved the draft, but still had no contact with
20 Respondent despite her numerous requests for an appointment to meet with him.

21 65. On or about December 29, 2007, Ms. Myers received a letter from
22 Respondent, dated December 26, 2007, in which Respondent informed Ms.
23 Myers that he would be unable to continue to represent her.
24
25

1 66. In the same letter Respondent stated that a check for the balance
2 remaining on Ms. Myers retainer was enclosed. This statement was false and
3 known by Respondent to be false.
4

5 67. No check from Respondent to Ms. Myers was included with the
6 letter, nor subsequently received by Ms. Myers.
7

8 68. Ms. Myers was not informed by Respondent whether the notice of
9 claim had been filed in her matter.
10

11 69. Ms. Myers attempted, numerous times, to contact Respondent's
12 office after receipt of Respondent's December 26, 2007, letter, but was unable to
13 either reach Respondent or leave a message for him at his office number.
14

15 70. By letter dated February 13, 2008, sent to Respondent at his address
16 of record and an alternate address, the State Bar made Respondent aware of Ms.
17 Myers' allegations.
18

19 71. Respondent was instructed to respond within 20 days of the date of
20 the letter.
21

22 72. Respondent failed to respond.
23

24 73. By letter dated March 11, 2008, sent to Respondent at this address
25 of record and an alternate address, Respondent was reminded of his obligation to
respond and advised that his failure to respond was, in itself, grounds for possible
discipline.

1 74. Respondent was instructed to respond within ten days of the date of
2 the letter.

3 75. Respondent failed to respond.
4

5 **COUNT SIX (File No. 08-0177/Wall)**

6 76. Prior to October 2007, Eric Wall ("Mr. Wall") hired Respondent and
7 Respondent's firm to represent him in a variety of civil matters.

8 77. During October 2007, Mr. Wall was involved in a civil matter, and
9 was represented by Respondent and Erin Farrar ("Ms. Farrar"), an associate in
10 Respondent's firm.
11

12 78. Ms. Farrar had been admitted to practice in Arizona for
13 approximately six months at that time; as Ms. Farrar's partner and/or supervisor,
14 Respondent was responsible for assuring that Ms. Farrar's conduct conformed to
15 the requirements of the Rules of Professional Conduct.
16

17 79. On or about October 10, 2007, and October 11, 2007, opposing
18 counsel, Rick Carter ("Mr. Carter") of Hymson Goldstein & Pantiliat, P.C.,
19 contacted Ms. Farrar to discuss possible settlement of the matter.
20

21 80. Neither Ms. Farrar nor Respondent advised Mr. Wall of those
22 contacts from opposing counsel.
23

24 . . .

25 . . .

1 81. Neither Ms. Farrar nor Respondent advised Mr. Wall of the
2 proposed stipulation in the matter that would have required Mr. Wall to dismiss a
3 Register of Contractors complaint.
4

5 82. On or about October 25, 2007, Mr. Wall discussed with Respondent
6 the possibility of declaring bankruptcy.
7

8 83. By letter dated October 25, 2007, Respondent informed Mr. Wall
9 that his civil matter would be placed "on hold" until Mr. Wall secured a
10 bankruptcy lawyer; Respondent instructed Mr. Wall to have his bankruptcy
11 attorney contact Respondent to discuss his legal matters.
12

13 84. On or about October 29, 2007, and November 5, 2007, Mr. Carter
14 contacted both Respondent and Ms. Farrar to further discuss possible settlement
15 and/or to schedule Mr. Wall's deposition.
16

17 85. Mr. Wall was not notified by Respondent, or anyone at
18 Respondent's firm, that the opposing party wished to take his deposition.
19

20 86. On or about November 5, 2007, opposing counsel again e-mailed
21 Respondent, and Ms. Farrar, about Mr. Wall's matter.
22

23 87. Mr. Wall was not notified by Respondent, or anyone at
24 Respondent's firm, that the opposing party had e-mailed Respondent, or
25 Respondent's associate, relating to Mr. Wall's matter.

1 88. In or about the early days of December 2007, Mr. Wall spoke to
2 Respondent and was assured by Respondent that his matter was proceeding.

3 89. By letter dated December 26, 2007, Mr. Wall was informed by
4 Respondent that Respondent was unable to continue representing Mr. Wall.

5 90. Mr. Wall did not receive an accounting from Respondent.

6 91. In or about the end of December, Mr. Wall's matter was still
7 pending before the Superior Court.
8

9 92. As of December 26, 2007, Mr. Wall had paid Respondent
10 \$12,901.89 in attorney's fees and had no additional funds with which to retain a
11 new lawyer.
12

13 93. By letter dated February 26, 2008, sent to Respondent at his address
14 of record and an alternate address, the State Bar advised Respondent of Mr.
15 Wall's allegations and instructed Respondent to respond within 20 days of the
16 date of the letter.
17

18 94. Respondent failed to respond.

19 95. By letter dated March 24, 2008, sent to Respondent at his address of
20 record and an alternate address, the State Bar reminded Respondent of his
21 obligation to respond and cooperate with the investigation of the State Bar and
22 that failure to do so, in itself, was grounds for discipline.
23
24
25

1 96. Respondent was instructed to respond within ten days of the date of
2 the letter.

3 97. Respondent failed to respond.
4

5 **COUNT SEVEN (File No. 08-0187/Swenson)**

6 98. In or about August 2005, Trevor Swenson ("Mr. Swenson"), on
7 behalf of Westar Plumbing Services ("Westar"), hired Respondent for
8 representation in numerous legal matters including contractual disputes and a
9 legal malpractice claim.
10

11 99. During the period of representation, Mr. Swenson/Westar paid
12 Respondent for his services on a monthly basis after receiving billing statements
13 from Respondent.
14

15 100. During the time Respondent represented Mr. Swenson/Westar, Mr.
16 Swenson called Respondent's office intermittently to ask for updates on his legal
17 matters.
18

19 101. Mr. Swenson was unable, during any of those phone calls, made
20 every three to four weeks, to speak with Respondent.

21 102. Mr. Swenson usually spoke to a member of Respondent's staff,
22 believed by Mr. Swenson to be a paralegal; the paralegal would usually tell Mr.
23 Swenson that they would have to check for the information requested by Mr.
24
25

1 Swenson and then would fail to return Mr. Swenson's call to provide the
2 information.

3
4 103. On or about December 26, 2007, Respondent closed his law office
5 without prior notice to Mr. Swenson/Westar.

6 104. Respondent did not arrange to return Westar's files to Mr. Swenson.

7
8 105. At the time Respondent closed his law office, Westar had one or
9 more legal matters pending; those legal matters had deadlines pending.

10 106. Respondent failed to inform Westar of any case deadlines, and failed
11 to take appropriate action to protect Westar's interests before closing his practice
12 including but not limited to assuring that Westar's files were returned to Mr.
13 Swenson or another representative of Westar.
14

15 107. By letter dated February 26, 2008, sent to Respondent at his address
16 of record and an alternate address, the State Bar notified Respondent of Mr.
17 Swenson's charge and was instructed to respond within 20 days of the date of the
18 letter.
19

20 108. Respondent failed to respond.

21 109. By letter dated March 24, 2008, sent to Respondent at his address of
22 record and an alternate address, the State Bar reminded Respondent of his
23 obligation to respond and cooperate with the State Bar's investigation and that
24 failure to do so was, in itself, grounds for discipline.
25

1 110. Respondent was instructed to respond within ten days of the date of
2 the letter.

3
4 111. Respondent failed to respond.

5 **COUNT EIGHT (File No. 08-0195/State Bar of Arizona)**

6 112. In or about mid-2005, Respondent was hired by Karen Spencer
7 (“Ms. Spencer”) for representation relating to her business, Hardknocks Limited
8 Partnership (“Hardknocks”), and with an individual by the name of Sam Kholi
9 (“Mr. Kholi”).
10

11 113. The dispute involved a sale of real estate in San Diego, California;
12 the sale had been aborted due to Mr. Kholi’s inability to secure financing.
13

14 114. Respondent advised Ms. Spencer that the earnest money furnished
15 by Mr. Kholi was not refundable and instructed escrow to retain the funds.

16 115. Mr. Kholi then initiated suit in San Diego County Superior Court
17 and Respondent advised Ms. Spencer and Hardknocks to aggressively defend.
18

19 116. Respondent proceeded to represent Ms. Spencer and Hardknocks
20 and was paid fees for his services.

21 117. In or about December 2007, the Kholi vs. Spencer/Hardknocks case
22 went to trial.
23

24 118. Respondent did not adequately prepare for the trial.
25

1 119. Respondent failed to designate any witnesses on behalf of
2 Spencer/Hardknocks; failed to identify any exhibits to be used in the defense of
3 the matter; and failed to identify and/or call any expert witnesses.
4

5 120. Respondent then agreed with opposing counsel to try the case to the
6 Court and rely solely cross-examination of Mr. Kholi's witnesses and objections
7 to Mr. Kholi's evidence.
8

9 121. Respondent made this agreement without the advice and/or consent
10 of Ms. Spencer/Hardknocks.

11 122. Respondent knowingly did not advise Ms. Spencer/Hardknocks that
12 a trial had been scheduled or would be conducted.
13

14 123. Respondent knowingly did not advise Ms. Spencer/Hardknocks that
15 he had failed to adequately prepare for the hearing.

16 124. Respondent knowingly did not advise Ms. Spencer/Hardknocks that
17 the trial had been held.
18

19 125. Respondent knowingly did not advise Ms. Spencer/Hardknocks that
20 Mr. Kholi had prevailed and/or that a judgment had been entered against Ms.
21 Spencer/Hardknocks.
22

23 126. After having no contact from Respondent for a number of months,
24 Ms. Spencer contacted Mr. Kholi's counsel directly to obtain information about
25 her case.

1 127. It was only after contacting opposing counsel that Ms. Spencer
2 learned that the trial had been held and that Mr. Kholi had prevailed.

3 128. Respondent failed to return the file relating to this matter to Ms.
4 Spencer/Hardknocks.
5

6 129. Ms. Spencer/Hardknocks had to deal with post-trial motions and
7 other matters as an unrepresented party, as Respondent had abandoned his client;
8 Ms. Spencer's attempts to do so were negatively impacted by Respondent's
9 failure to return the file to her.
10

11 130. By letter dated March 7, 2008, sent to Respondent at his address of
12 record and an alternate address, the State Bar informed Respondent of the
13 initiation of a disciplinary investigation relating to the Spencer/Hardknocks legal
14 matter.
15

16 131. Respondent was instructed to respond within 20 days of the date of
17 the letter.
18

19 132. Respondent failed to respond.

20 133. By letter dated April 3, 2008, sent to Respondent at his address of
21 record and an alternate address, Respondent was reminded of his obligation to
22 respond and that his failure to cooperate with a disciplinary investigation was, in
23 itself, grounds for discipline.
24
25

1 134. Respondent was instructed to respond within ten days of the date of
2 the letter.

3 135. Respondent failed to respond.
4

5 **COUNT NINE (File No. 08-0196/State Bar of Arizona/Judicial Referral)**

6 136. On or about January 7, 2008, a PreTrial Conference was conducted
7 in Yuma County Superior Court in the case of *Cumis Insurance Society, Inc. V.*
8 *Hutchinson*, Case No. S1400 CV200600343, before the Honorable Larry C.
9 Kenworthy.
10

11 137. Sabre Hutchinson (“Ms. Hutchinson”), the defendant, had been
12 represented by Respondent.
13

14 138. Respondent did not appear for the January 7, 2008, hearing, and did
15 not file a motion to withdraw from the matter.

16 139. Ms. Hutchinson provided to the Court a letter, sent to her by
17 Respondent, stating that she would have to contact another lawyer in the matter.
18

19 140. The Court continued the hearing and issued an Order to Show Cause
20 for Respondent regarding his failure to appear at the hearing.

21 141. The Court, by copy of the minute entry, notified the State Bar’s of
22 Respondent’s failure to appear at the hearing.
23

24 142. By letter dated March 4, 2008, sent to Respondent at his address of
25 record and an alternate address, the State Bar notified Respondent that a

1 disciplinary investigation had been commenced and instructed Respondent to
2 respond within 20 days of the date of the letter.

3 143. Respondent failed to respond.
4

5 144. By letter dated April 3, 2008, sent to Respondent at his address of
6 record and an alternate address, the State Bar reminded Respondent of his
7 obligation to respond and cooperate with the disciplinary investigation, and that
8 failure to do so was, in itself, grounds for discipline.
9

10 145. Respondent was instructed to respond within ten days of the date of
11 the letter.

12 146. Respondent failed to respond.
13

14 **COUNT TEN (File No. 08-0206/Jiminez)**

15 147. On or about March 9, 2005, Edwin Jiminez ("Mr. Jiminez") hired
16 Respondent, and Respondent's firm, to represent him in relation to a motorcycle
17 accident.
18

19 148. Respondent did not personally meet with Mr. Jiminez; Mr. Jiminez
20 was informed by a paralegal employed by Respondent's firm that Respondent
21 and/or his firm would represent Mr. Jiminez.
22

23 149. During the course of the representation, Mr. Jiminez continually had
24 to call Respondent to obtain updated information about the status of his case.
25

1 150. Each time Mr. Jiminez telephoned to obtain an update on the status
2 of his case, he spoke with a paralegal who informed Mr. Jiminez that his case
3 was progressing.
4

5 151. On or about December 13, 2007, Mr. Jiminez received a letter from
6 Respondent updating Mr. Jiminez on the status of his case.
7

8 152. By letter dated December 26, 2007, Mr. Jiminez was informed by
9 Respondent that Respondent would be unable to continue representing him.
10

11 153. At that time, Mr. Jiminez was given no additional information about
12 the status of his case.
13

14 154. Mr. Jiminez later learned, not through any action by Respondent,
15 that his case has been scheduled for possible dismissal in the Yuma County
16 Superior Court in March 2008.
17

18 155. By letter dated February 13, 2008, sent to Respondent at his address
19 of record and an alternate address, the State Bar advised Respondent of Mr.
20 Jiminez's charge; Respondent was instructed to respond within 20 days of the
21 date of the letter.
22

23 156. Respondent failed to respond.
24

25 157. By letter dated March 11, 2008, sent to Respondent at his address of
record and an alternate address, the State Bar reminded Respondent of his

1 obligation to respond and that failure to do so was, in itself, grounds for
2 discipline.

3
4 158. Respondent was instructed to respond within ten days of the date of
5 the letter.

6 159. Respondent failed to respond.

7
8 **COUNT ELEVEN (File No. 08-0207/Joslyn)**

9 160. In or about 2006, Norman Joslyn ("Mr. Joslyn") contacted
10 Respondent for representation relating to filing tax lien foreclosures.

11 161. Mr. Joslyn paid Respondent \$2,0000 as an advance fee, a "retainer,"
12 to begin the foreclosure process.

13
14 162. After Mr. Joslyn paid Respondent, Respondent informed Mr. Joslyn
15 that Respondent could not begin the lien foreclosure process until November
16 2007.

17
18 163. By letter dated November 14, 2007, Respondent informed Mr.
19 Joslyn that the lien foreclosure process could not begin until March 2008.

20 164. In that letter, Respondent requested authorization from Mr. Joslyn to
21 proceed with notices of intent to foreclose.

22
23 165. Mr. Joslyn signed the authorization, on or about November 20,
24 2007, and returned it to Respondent.

1 166. Mr. Joslyn heard nothing further from Respondent until he received
2 a letter from Respondent dated December 26, 2007, in which Respondent
3 informed Mr. Joslyn that Respondent would be unable to continue to represent
4 Mr. Joslyn.
5

6 167. Respondent's December 26, 2007, letter also stated that a check was
7 enclosed for the unexpended balance of the fee paid by Mr. Joslyn.
8 Respondent's statement was false and known by Respondent to be false.
9

10 168. At that time, Respondent held \$1,534.00 of the funds paid to him by
11 Mr. Joslyn.
12

13 169. Respondent failed to enclosed a check, in any amount, payable to
14 Mr. Joslyn with his letter dated December 26, 2007.
15

16 170. Mr. Joslyn attempted to contact Respondent, or any member of his
17 firm, but was unable to do so.
18

19 171. Respondent failed, upon termination of his representation, to return
20 Mr. Joslyn's file to him.
21

22 172. By letter dated February 26, 2008, sent to Respondent at his address
23 of record and an alternate address, the State Bar advised Respondent of Mr.
24 Joslyn's charge and instructed Respondent to respond within 20 days of the date
25 of the letter.

 173. Respondent failed to respond.

1 174. By letter dated March 24, 2008, sent to Respondent at his address of
2 record and an alternate address, the State Bar reminded Respondent of his
3 obligation to respond and that failure to do so was, in itself, grounds for
4 discipline.
5

6 175. Respondent was instructed to respond within ten days of the date of
7 the letter.
8

9 176. Respondent failed to respond.

10 **COUNT TWELVE (File No. 08-0208/Riesgo)**

11 177. On or about October 2, 2007, Irene and Adriano Riesgo (“the
12 Riesgos”) hired Respondent to represent them in a debt collection matter.
13

14 178. The Riesgos paid Respondent \$750 pursuant to the terms of the fee
15 agreement.
16

17 179. Respondent took no further action in the Riesgo’s matter, or on their
18 behalf.
19

20 180. By letter dated December 26, 2007, Respondent informed the
21 Riesgos that he would be unable to continue to represent them.
22

23 181. Respondent’s letter stated that a check was enclosed for the balance
24 remaining of their retainer. Respondent’s statement was false and known by
25 Respondent to be false.

1 182. Respondent did not enclose a check for any amount, made payable
2 to the Riesgos, in his December 26, 2007, letter.

3 183. By letter dated February 26, 2008, sent to Respondent at his address
4 of record and an alternate address, the State Bar informed Respondent of the
5 Riesgo's charge and instructed Respondent to respond within 20 days of the date
6 of the letter.
7

8 184. Respondent failed to respond.
9

10 185. By letter dated March 24, 2008, sent to Respondent at his address of
11 record and an alternate address, the State Bar reminded Respondent of his
12 obligation to respond and that failure to do so was, in itself, grounds for
13 discipline.
14

15 186. Respondent was instructed to respond within ten days of the date of
16 the letter.
17

18 187. Respondent failed to respond.
19

COUNT THIRTEEN (File No. 08-0214/Goldsbary)

20 188. On or about April 9, 2007, Barney Goldsbary and his wife Patricia
21 ("the Goldsbarys"), hired Respondent for representation in a construction defect
22 matter.
23
24
25

1 189. The Goldsbarys had already filed a claim with the Registrar of
2 Contractors ("ROC") and desired representation to assure that all defects were
3 corrected and desired representation at the hearing.
4

5 190. From the outset of the representation, the Goldsbarys informed
6 Respondent that they did not desire to file a lawsuit, but did want representation
7 at any ROC hearing.
8

9 191. On or about April 9, 2007, the Goldsbarys paid Respondent \$5,000
10 to represent them in their proceedings before the ROC.

11 192. By letter dated June 29, 2007, to opposing counsel, Respondent
12 opined that it would be in the opposing party's best interest to negotiate a
13 purchase of the property back from the Goldsbarys.
14

15 193. The Goldsbarys had not authorized Respondent's proposal of a
16 "buy-back" of the property, Respondent had not received authority from the
17 Goldsbarys to pursue this possible resolution and had not discussed that option
18 with them.
19

20 194. The Goldsbarys were unaware Respondent had made this proposal
21 without their authorization until they received a copy of his June 2007, letter.
22

23 195. Between June 2007, and the end of November 2007, Mrs. Goldsbary
24 attempted numerous times to contact Respondent to discuss their case; she was
25 unable to reach Respondent or discuss the matter with him.

1 196. Ms. Goldsbary left numerous telephone/voice mail messages for
2 Respondent in an attempt to discuss her matter with him, asking that he return
3 her call.
4

5 197. When Mrs. Goldsbary received her final billing statements, it
6 appeared that Respondent had charged her for each message she had left for him,
7 in her attempt to contact him.
8

9 198. Respondent returned none of Mrs. Goldsbary's calls.

10 199. By letter dated November 29, 2007, Respondent informed Mr. and
11 Mrs. Goldsbary that he was terminating his representation of them because they
12 already had a complaint filed with the ROC, and they had rejected his
13 recommendation was to file suit against the builder.
14

15 200. Respondent's purported justification for terminating representation
16 was knowingly untruthful, was contrary to the instructions he had received and
17 the stated purpose of his representation as expressed to him by the Goldsbarys at
18 the beginning of his representation.
19

20 201. By letter dated December 26, 2007, Respondent informed the
21 Goldsbarys that he would no longer be able to represent them.
22

23 202. Respondent's letter referred the Goldsbarys to a number of attorneys
24 who might be willing to represent them; one of those attorneys was opposing
25 counsel in their pending matter.

1 203. The Goldsbarys were able to retrieve his file from Respondent; the
2 billing statements provided by Respondent show that the Goldsbarys were
3 charged for having picked up their file.
4

5 204. Respondent, although he billed the Goldsbarys for over \$4,000,
6 achieved none of the purposes for which he had been retained.
7

8 205. By letter dated February 26, 2008, sent to Respondent at his address
9 of record and an alternate address, the State Bar advised Respondent of the
10 Goldsbary's charge and instructed Respondent to respond within 20 days of the
11 date of the letter.
12

13 206. Respondent failed to respond.
14

15 207. By letter dated March 24, 2008, sent to Respondent at his address of
16 record and an alternate address, the State Bar reminded Respondent of his
17 obligation to respond and that his failure to do so was, in itself, grounds for
18 discipline.
19

20 208. Respondent was instructed to respond within ten days of the date of
21 the letter.
22

23 209. Respondent failed to respond.
24

25 ...

...

...

COUNT FOURTEEN (File No. 08-0301/Adler)

210. On or about August 2006, James Adler ("Mr. Adler") hired Respondent to represent him relating to his business claims against Fischer, Keck & Associates Architects, Inc.

211. Mr. Adler paid Respondent a total of \$8, 743.50 during the course of the representation.

212. By letter dated December 26, 2007, Respondent informed Mr. Adler that he would be unable to continue to represent him.

213. Respondent's December 26, 2007, letter contained no other information about Mr. Adler's matter.

214. A court hearing was scheduled in Mr. Adler's matter for January 13, 2008.

215. Respondent failed to inform Mr. Adler of the scheduled hearing; Mr. Adler, therefore, did not attend.

216. Respondent did not attend the January 13, 2008, hearing in Mr. Adler's matter.

217. By letter dated March 5, 2008, sent to Respondent at his address of record and an alternate address, the State Bar advised Respondent of Mr. Adler's charge and instructed him to respond within twenty days of the date of the letter.

218. Respondent failed to respond.

1 219. By letter dated April 3, 2008, sent to Respondent at his address of
2 record and an alternate address, the State Bar reminded Respondent of his
3 obligation to respond and that his failure to do so was, in itself, grounds for
4 discipline.
5

6 220. Respondent was instructed to respond within ten days of the date of
7 the letter.
8

9 221. Respondent failed to respond.

10 **COUNT FIFTEEN (File No. 08-0322/Barrios)**

11 222. In or about November 2007, Beatrice Barrios and her husband ("Mr.
12 and Mrs. Barrios") hired Respondent to draft a business purchase contract for
13 them.
14

15 223. Mr. and Mrs. Barrios paid Respondent \$1,500 for his representation.

16 224. At their initial meeting, which lasted less than one hour, Respondent
17 gave Mr. and Mrs. Barrios a list of information he needed to begin to draft the
18 contract.
19

20 225. At that meeting, it was agreed that Respondent would have the
21 contract drafted for them by the end of the year, as they desired to begin their
22 new business in January 2008.
23

24 ...

25 ...

1 226. Mr. and Mrs. Barrios compiled the information and promptly
2 provided it to Respondent, by leaving it at his office with member of
3 Respondent's staff.
4

5 227. Ms. Barrios had no further communication from or with
6 Respondent, despite numerous attempts on her part to reach him.
7

8 228. Mr. Barrios was unable to speak to Respondent, but left a message
9 for Respondent with his staff, reminding Respondent that they needed the
10 contract before the end of the year.
11

12 229. Mr. and Mrs. Barrios were informed by Respondent's staff that the
13 office would be closed over the Christmas holiday, but that they would have their
14 contract as promised.
15

16 230. By letter dated December 26, 2007, Respondent informed Mr. and
17 Mrs. Barrios that he would be unable to represent them further.
18

19 231. Respondent failed to complete the work for which he was retained.
20

21 232. According to the last bill the Barrios' received Respondent, by his
22 own accounting, owed the Barrios' at least \$990.
23

24 233. Respondent's letter stated that a check was enclosed for any unused
25 portion of the funds they had paid him. This statement was false and known by
Respondent to be false.

1 234. No check payable to the Barrios' for any amount was enclosed with
2 Respondent's December 26, 2007, letter.

3 235. By letter dated March 10, 2008, sent to Respondent at his address of
4 record and an alternate address, the State Bar advised Respondent of the Barrios'
5 charge and that a disciplinary investigation had been initiated. Respondent was
6 instructed to respond no later than 20 days from the date of the letter.
7

8 236. Respondent failed to respond.
9

10 237. By letter dated April 15, 2008, sent to Respondent at his address of
11 record and an alternate address, Respondent was reminded of his obligation to
12 respond and that failure to do so was, in itself, grounds for discipline.
13

14 238. Respondent was instructed to respond within ten days of the date of
15 the letter.

16 239. Respondent failed to respond.
17

18 **COUNT SIXTEEN (File No. 08-0386/Macy)**

19 240. In or about July 2007, Clinton and Linda Macy ("the Macys") hired
20 Respondent for representation relating to the failure of Medicare to pay bills
21 resulting from an injury sustained by Mr. Macy.
22

23 241. The Macys paid Respondent \$1,000 for the representation.

24 242. Shortly after Respondent was hired, Medicare paid the outstanding
25 bills.

1 243. In or about December 2007, the Macys received a letter from
2 Respondent in which Respondent stated that he was unable to continue to
3 represent them.
4

5 244. In that letter, Respondent stated that he was returning to the Macys
6 any unused portion of the funds they had paid him by enclosed check. This
7 statement was false and known by Respondent to be false.
8

9 245. According to the billing statement included with Respondent's
10 letter, Respondent owed the Macys \$771.73, however no check payable to the
11 Macys was enclosed with Respondent's letter.
12

13 246. By letter dated March 7, 2008, sent to Respondent at his address of
14 record and an alternate address, the State Bar advised Respondent of the Macy's
15 charge and instructed him to respond within 20 days of the date of the letter.
16

17 247. Respondent failed to respond.

18 248. By letter dated April 3, 2008, sent to Respondent at his address of
19 record and an alternate address, the State Bar reminded Respondent of his
20 obligation to respond and that failure to do so was, in itself, grounds for
21 discipline.
22

23 249. Respondent was instructed to respond within ten days of the date of
24 the letter.

25 250. Respondent failed to respond.

COUNT SEVENTEEN (File No. 08-0379/Bailey)

251. On or about September 8, 2006, Russell Bailey ("Mr. Bailey"), on behalf of his business, Mystique Custom Cycles ("Mystique"), hired Respondent to pursue a claim for damage done to a motorcycle lent by Mr. Bailey/Mystique to another individual, Mr. Garcia.

252. Mr. Bailey also wished to pursue a claim for parts and labor for work performed by Mr. Bailey/Mystique on Mr. Garcia's motorcycle.

253. Although Respondent met with Mr. Bailey personally when he was first retained, Mr. Bailey had no further personal or telephone contact with Respondent during the course of the representation.

254. Although between November 20, 2006, and December 1, 2006, Respondent billed Mr. Bailey/Mystique for telephone calls made/received and for drafting a stipulated judgment, Respondent never provided a copy of any such judgment to Mr. Bailey, nor did Respondent discuss it with Mr. Bailey.

255. On or about December 1, 2006, Mr. Bailey received a copy of a letter from Respondent to opposing counsel in which Respondent proposed a settlement of Mr. Bailey's/Mystique's matter.

256. Respondent had not discussed the settlement with Mr. Bailey and had not informed Mr. Bailey that he was going to send a settlement proposal to

1 Mr. Garcia's counsel; Mr. Bailey learned of the proposed settlement only upon
2 receipt of the copy of Respondent's letter.

3
4 257. Although between April 19, 2007, and June 8, 2007, Mr.
5 Bailey/Mystique were billed by Respondent for various motions regarding a
6 change of judge, Mr. Bailey was not informed by Respondent that there was a
7 request for change of judge, or why a change of judge was being sought.

8
9 258. On or about August 20, 2007, Mr. Bailey received, by mail, a copy
10 of a judgment that had been granted in his favor.

11 259. Mr. Bailey had been unaware, until he received the copy, that
12 Respondent had filed any pleading seeking a judgment, or exactly how much in
13 monetary damages Respondent had sought.

14
15 260. Mr. Bailey received no additional information from Respondent
16 about the judgment.

17
18 261. Subsequently, on or about November 27, 2007, Mr. Bailey received
19 a letter from Respondent stating that they should conduct a debtor examination of
20 Mr. Garcia, and was advised to contact Respondent and/or Respondent's office
21 on how to proceed.

22
23 262. Mr. Bailey attempted to meet with Respondent but was unable to do
24 so; Respondent's staff informed Mr. Bailey that it would cost him between \$500
25

1 and \$1,500 in additional fees to have Respondent conduct the debtor
2 examination.

3
4 263. Mr. Bailey attempted to contact Respondent to discuss the matter,
5 beginning from the end November 2007 until the end of December 2007, but was
6 unable to do so as Respondent's office was closed.

7
8 264. On or about December 29, 2007, Mr. Bailey received a letter from
9 Respondent in which Respondent stated that he would be unable to continue to
10 represent Mr. Bailey/Mystique.

11
12 265. Mr. Bailey/Mystique received no additional information from
13 Respondent about his pending matter.

14
15 266. On or about January 26, 2008, Mr. Bailey received a minute entry
16 from the Yuma County Justice Court, stating that Mr. Bailey and his attorney had
17 failed to appear for a hearing on an Order Requiring Judgment Debtor to Appear
18 and Produce Documents scheduled on January 22, 2008, and that the hearing was
19 vacated.

20
21 267. Respondent failed to inform Mr. Bailey/Mystique that a hearing was
22 scheduled for January 22, 2008, the nature of or purpose for the hearing, or that
23 Mr. Bailey was required to attend.

24
25 268. During the course of Respondent's representation, Respondent was
paid \$6,612.73 by Mr. Bailey/Mystique.

1 269. By letter dated March 7, 2008, sent to Respondent at his address of
2 record and an alternate address, Respondent was advised of Mr. Bailey's charge
3 and instructed to respond within 20 days of the date of the letter.
4

5 270. Respondent failed to respond.

6 271. By letter dated April 3, 2008, sent to Respondent at his address of
7 record and an alternate address, Respondent was reminded of his obligation to
8 respond and that failure to do so, in itself, was grounds for discipline.
9

10 272. Respondent was instructed to respond within ten days of the date of
11 the letter.

12 273. Respondent failed to respond.
13

14 **COUNT EIGHTEEN (File No. 08-0517/Wells)**

15 274. In or about July 2007, Respondent was retained by Richard Wells
16 ("Mr. Wells") for representation in a housing dispute.

17 275. Mr. Wells paid Respondent a \$2,500 advance fee for his
18 representation.
19

20 276. Upon information and belief, Mr. Wells' check was deposited into
21 Respondent's trust account in August 2007.

22 277. In or about September 2007, Respondent prepared a letter sent to
23 opposing counsel requesting information about Mr. Wells' case.
24
25

1 278. In or about November 2007, Respondent informed Mr. Wells that
2 opposing counsel had not responded to the September 2007, letter.

3 279. By letter to Mr. Wells, dated December 6, 2007, Respondent
4 apologized to Mr. Wells for not having taken any additional action on Mr. Wells'
5 matter.
6

7 280. By letter dated December 26, 2007, Respondent informed Mr. Wells
8 that he would be unable to continue representing Mr. Wells.
9

10 281. Respondent stated, in that letter, that a check for any balance
11 remaining of Mr. Wells' funds was enclosed. That statement was false and
12 known by Respondent to be false.
13

14 282. No check made payable to Mr. Wells, for any amount, was enclosed
15 with Respondent's December 26, 2007, letter.

16 283. As of December 26, 2007, Respondent owed to Mr. Wells at least
17 \$2,055.00, the unearned balance of the \$2,500 paid to Respondent by Mr. Wells.
18

19 284. In reviewing the billing statements provided by Respondent during
20 the course of the representation, Mr. Wells identified a number of questionable
21 charges that he wished to dispute.
22

23 285. Mr. Wells attempted to contact Respondent to discuss his concerns,
24 but was unable to contact Respondent.
25

1 286. By letter dated March 27, 2008, sent to Respondent at his address of
2 record and an alternate address, the State Bar advised Respondent of Mr. Wells'
3 charge and instructed him to respond within 20 days of the date of the letter.
4

5 287. Respondent did not respond.

6 288. By letter dated April 22, 2008, sent to Respondent at his address of
7 record and an alternate address, the State Bar reminded Respondent of his
8 obligation to respond and that failure to do so was, in itself, grounds for
9 discipline.
10

11 289. Respondent was instructed to respond within ten days of the date of
12 the letter.
13

14 290. Respondent did not respond.

15 **COUNT NINETEEN (File No. 08-0555/Larson)**

16 291. On or about April 17, 2007, Dorothy Larson ("Ms. Larson") hired
17 Respondent for representation relating a possible claim against Dow Corning and
18 for assistance in having Ms. Larson's Oregon attorney, Michael Williams,
19 respond to requests for information.
20

21 292. Ms. Larson paid Respondent \$5,000 to represent her.
22

23 293. On or about December 26, 2007, Ms. Larson received a letter from
24 Respondent in which Respondent stated that he would be unable to continue to
25 represent her.

1 294. Respondent's letter also stated that a check was enclosed for any
2 balance remaining of the funds she had provided to him. This statement was
3 false and known by Respondent to be false.
4

5 295. No check made payable to the Larsons was enclosed in
6 Respondent's December 26, 2007, letter.
7

8 296. Respondent's letter also stated that if Ms. Larson wished to retrieve
9 her original file, she should call Respondent's office to make arrangements to do
10 so.
11

12 297. Ms. Larson went to Respondent's office on or about January 8,
13 2008, to retrieve her file.
14

15 298. When she arrived, Ms. Larson found the office was locked and she
16 was unable to obtain her file.
17

18 299. During the period of representation, Respondent failed to provide
19 any accounting of the funds Ms. Larson had provided, and failed to provide Ms.
20 Larson with reasonable information about the status of her case or the work he
21 had performed on her case.
22

23 300. Based on information and belief, Respondent performed little or no
24 work on Ms. Larson's matter.
25

 301. By letter dated April 4, 2008, sent to Respondent at his address of
record and an alternate address, the State Bar notified Respondent of the charges

1 received relating to Ms. Larson's matter and instructed Respondent to respond
2 within 20 days of the date of the letter.

3
4 302. Respondent failed to respond.

5 303. By letter dated May 1, 2008, sent to Respondent at his address of
6 record and an alternate address, the State Bar reminded Respondent of his
7 obligation to respond and that failure to do so could be, in itself, grounds for
8 discipline.
9

10 304. Respondent was instructed to respond within ten days of the date of
11 the letter.

12 305. Respondent failed to respond.
13

14 **COUNT TWENTY (File No. 08-0694/State Bar of Arizona)**

15 306. On or about March 27, 2008, a hearing was held in Respondent's
16 personal domestic relations case, Case No. S1400DO0200701031.

17 307. Respondent did not appear for the hearing, although Petitioner had
18 personally informed Respondent of the hearing date, at least four days prior to
19 the hearing.
20

21 308. The Court, the Honorable Kathryn Stocking-Tate, by Order entered
22 on April 8, 2008, found that Respondent had actual knowledge of his support
23 obligations, having been personally present when the support orders were
24 entered.
25

1 309. The Court further found that Respondent had failed to pay his
2 support obligations as ordered by the Court.

3
4 310. The Court further found that Respondent's failure to appear at the
5 hearing was voluntary.

6 311. The Court further found that Respondent was in contempt of the
7 Court's orders by willfully not paying his support obligations and willfully
8 failing to appear for the hearing.
9

10 312. In a separate Order, filed on April 8, 2008, that Respondent was in
11 arrears for court-ordered child support for the period between August 1, 2007
12 through March 31, 2008.
13

14 313. In that Order, the Court also found that Respondent had failed, in
15 addition to failing to pay child support as ordered by the Court, to pay spousal
16 maintenance as ordered by the Court.
17

18 314. A civil arrest warrant was issued for Respondent as a result of the
19 Court's findings.

20 315. By letter dated April 24, 2008, sent to Respondent at his address of
21 record and an alternate address, Respondent was advised of the State Bar's
22 investigation into these matters and instructed to respond within 20 days of the
23 date of the letter.
24

25 316. Respondent did not respond.

1 **III. CONCLUSIONS OF LAW**

2 Based on the findings of fact, above, the Hearing Officer finds as
3 follows:
4

5 A. COUNT ONE: Respondent's conduct violated Rule 42,
6 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5 and 8.1(b), and Rule 53(f),
7 Ariz.R.Sup.Ct.
8

9 B. COUNT TWO: Respondent's conduct violated Rule 42,
10 Ariz.R.Sup.Ct., specifically ERs 1.4, 1.5, 1.16, and 8.1(b), and Rule 53(d) and
11 (f), Ariz.R.Sup.Ct.
12

13 C. COUNT THREE: Respondent's conduct violated Rule 42,
14 Ariz.R.Sup.Ct., specifically ERs 1.4, 1.5, 1.16 and 8.1(b), and Rule 53(d) and (f),
15 Ariz.R.Sup.Ct.
16

17 D. COUNT FOUR: Respondent's conduct violated Rule 42,
18 Ariz.R.Sup.Ct., specifically ER 8.1(b), and Rule 53(d) and (f), Ariz.R.Sup.Ct.
19

20 E. COUNT FIVE: Respondent's conduct violated Rule 42,
21 specifically ERs 1.3, 1.4, 1.5, 1.16, 8.1(b), and 8.4(c) and Rule 53(d) and (f),
22 Ariz.R.Sup.Ct.
23

24 F. COUNT SIX: Respondent's conduct violated Rule 42,
25 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5, 1.16, 5.1, 8.1(b) and 8.4(c) and
Rule 53(d) and (f), Ariz.R.Sup.Ct.

1 G. COUNT SEVEN: Respondent's conduct violated Rule 42,
2 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.16, and 8.1(b), and Rule 53(d) and
3 (f).
4

5 H. COUNT EIGHT: Respondent's conduct violated Rule 42,
6 Ariz.R.Sup.Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.16, 8.1(b) and
7 8.4(c) and (d), and Rule 53(d) and (f), Ariz.R.Sup.Ct.
8

9 I. COUNT NINE: Respondent's conduct violated Rule 42,
10 Ariz.R.Sup.Ct., specifically ER 8.1(b) and Rule 53(d) and (f), Ariz.R.Sup.Ct.
11

12 J. COUNT TEN: Respondent's conduct violated Rule 42,
13 Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.16, 5.3, 5.5, 8.1(b), and 8.4(d),
14 and Rule 53(d) and (f), Ariz.R.Sup.Ct.

15 K. COUNT ELEVEN: Respondent's conduct violated Rule 42,
16 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5, 1.16, 8.1(b), and 8.4(c), and Rule
17 53(d) and (f).
18

19 L. COUNT TWELVE: Respondent's conduct violated Rule 42,
20 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c), and Rule
21 53(d) and (f), Ariz.R.Sup.Ct.
22

23 M. COUNT THIRTEEN: Respondent's conduct violated Rule
24 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c),
25 and Rule 53(d) and (f), Ariz.R.Sup.Ct.

1 N. COUNT FOURTEEN: Respondent's conduct violated Rule
2 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.16, and 8.1(b), and Rule 53(d)
3 and (f), Ariz.R.Sup.Ct.
4

5 O. COUNT FIFTEEN: Respondent's conduct violated Rule 42,
6 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c), and Rule
7 53(d) and (f), Ariz.R.Sup.Ct.
8

9 P. COUNT SIXTEEN: Respondent's conduct violated Rule 42,
10 Ariz.R.Sup.Ct., specifically ERs 1.5, 1.16, 8.1(b) and 8.4(c), and Rule 53(d) and
11 (f), Ariz.R.Sup.Ct.
12

13 Q. COUNT SEVENTEEN: Respondent's conduct violated Rule
14 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c), and
15 Rule 53(d) and (f), Ariz.R.Sup.Ct.
16

17 R. COUNT EIGHTEEN: Respondent's conduct violated Rule
18 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c), and
19 Rule 53(d) and (f), Ariz.R.Sup.Ct.
20

21 S. COUNT NINETEEN: Respondent's conduct violated Rule
22 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.16, 8.1(b) and 8.4(c), and
23 Rule 53(d) and (f), Ariz.R.Sup.Ct.
24

25 . . .

. . .

1 T. COUNT TWENTY: Respondent's conduct violated Rule 42,
2 Ariz.R.Sup.Ct., specifically ERs 3.4(c), 8.1(b) and 8.4(c), and Rule 53(d) and (f),
3 Ariz.R.Sup.Ct.
4

5 IV. RECOMMENDED SANCTION

6 A. APPLICABLE *STANDARDS*

7 The *Standards* provide guidance with respect to an appropriate sanction in
8 this matter. The Supreme Court and Disciplinary Commission consider the
9 *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d
10 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040
11 (1990).
12

13 The Supreme Court and the Disciplinary Commission consistently use the
14 *Standards* to determine appropriate sanctions for attorney discipline. *See In re*
15 *Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). The *Standards* are designed to promote
16 consistency in sanctions by identifying relevant factors the court should consider
17 and then applying these factors to situations in which lawyers have engaged in
18 various types of misconduct. *Standard 1.3, Commentary*.
19

20 In determining an appropriate sanction, the Court and the Disciplinary
21 Commission consider the duty violated, the lawyer's mental state, the presence
22 or absence of actual or potential injury, and the existence of aggravating and
23
24
25

1 mitigating factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; ABA *Standard*
2 3.0.

3
4 The *Standards* identify four distinct categories in which a lawyer has
5 specific duties, to his client, to the general public, to the legal system and to the
6 profession. Respondent's duties to his clients, to the general public, to the legal
7 system and to the profession are all implicated by his misconduct in this matter.

8
9 *Standard* 4.41 provides that disbarment is generally appropriate when a
10 lawyer abandons the practice, knowingly fails to perform services for a client, or
11 engages in a pattern of neglect with respect to client matters and causes serious
12 or potentially serious injury to the client. Respondent's misconduct encompasses
13 all three eventualities. Respondent abandoned his practice with little or no notice
14 to clients, failed to refund funds belonging to more than one client, took no
15 action, or virtually no action, to assure that the clients were able to retrieve their
16 files, were informed of the status of their matter and that their rights or cases
17 were not negatively impacted.

18
19
20 Several of Respondent's clients had legal matters in progress when
21 Respondent abandoned his practice. Serious potential or actual harm was
22 suffered by those clients, as well as by the clients for whom Respondent did no
23 work having collected an advance fee. Although disbarment is the presumptive
24
25

1 sanction in this matter, it is still appropriate to review the applicable aggravating
2 and/or mitigating factors.

3
4 1. AGGRAVATION AND MITIGATION

5 Based on the facts of this matter, the following aggravating factors must be
6 considered.

7 *Standard 9.22(a)* Dishonest or selfish motives. Respondent abandoned his
8 practice with no advance notice to his clients; in a number of instances,
9 Respondent had collected an advance fee or deposit. Despite reciting in his
10 termination letters to those clients that he had enclosed a check for the balance
11 due to the client(s), Respondent failed to do so.
12

13
14 *Standard 9.22(c)* Pattern of misconduct. The State Bar's complaint
15 encompasses Respondent's misconduct relating to nineteen individual clients.
16 Respondent repeatedly either did not perform the work for which he had been
17 hired, or abandoned the client(s) during the course of their case(s).
18

19 *Standard 9.22(d)* Multiple offenses.

20 *Standard 9.22(e)* Bad faith obstruction of the disciplinary proceedings by
21 intentionally failing to comply with rules or orders of the disciplinary agency.
22 Respondent continually failed to respond to inquiries from Bar counsel(s) in rhw
23 investigation of these matters. Further, Respondent failed to participate in the
24
25

1 formal disciplinary process and did not appear at the aggravation/mitigation
2 hearing.

3 *Standard 9.22(f)* Refusal to acknowledge wrongful nature of conduct.
4
5 This factor applies, based on Respondent's failure to respond to the State Bar or
6 appear in the formal proceedings.

7 *Standard 9.22(h)* Substantial experience in the practice of law.
8
9 Respondent was admitted to the practice of law in Arizona in 2000.

10 *Standard 9.22(i)* Indifference to making restitution. Despite
11 acknowledging to a number of clients that he may have owed them money
12 remaining of the advance funds he received, he failed to refund even those
13 amounts.
14

15 Although Respondent has no prior disciplinary history, and therefore
16 *Standard 9.32(a)* is applicable, given the egregious misconduct in the instant
17 matter, that factor is given no weight.
18

19 B. PROPORTIONALITY

20 In the past, the Supreme Court has consulted similar cases in an attempt to
21 assess the proportionality of the sanction recommended. *See In re Struthers*, 179
22 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized
23 that the concept or proportionality review is "an imperfect process." *In re*
24
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1 *Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two
2 cases “are ever alike.” *Id.*

3
4 To have an effective system of professional sanctions, there must be
5 internal consistency, and it is appropriate to examine sanctions imposed in cases
6 that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772.
7 However, the discipline in each case must be tailored to the individual case, as
8 neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶
9 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614
10 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

11
12 “The *Standards* do not account for multiple charges of misconduct. The
13 ultimate sanction imposed should at least be consistent with the sanction for the
14 most serious instance of misconduct among a number of violations; it might well
15 be and generally should be greater than the sanction for the most serious
16 conduct.” *Standards, p. 6 In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

17
18
19 A number of recent cases support disbarment as the appropriate sanction
20 for Respondent’s misconduct. In *In re Brown*, SB 05-0054-D (2005), the lawyer
21 received substantial “retainers” or advance fees and then abandoned his clients,
22 their cases, and refused to refund any fees paid. The lawyer failed to
23 communicate with clients, failed to return their files – some containing original
24 documents – and lied to the clients about the status of their matters. The lawyer
25

1 then failed to respond to the State Bar and failed to cooperate with the State
2 Bar's investigation. The lawyer was disbarred pursuant to findings of violations
3 of numerous ethical rules, including ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(d) and
4 Rule 53(d) and (f). Six aggravating factors were found to apply and no
5 mitigating factors.
6

7 In *In re Menkveld*, SB 06-0120-D (2006), the lawyer was found to have
8 violated numerous ERs, including ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.1(b) and
9 8.4(d), as well as Rule 53(d) and (f). Menkveld abandoned his practice,
10 misappropriated funds, failed to repay a judgment ordered by the court and then
11 failed to respond to the State Bar's investigation or in the formal disciplinary
12 process. Seven aggravating factors were found to have applied, and one
13 mitigating factor. Menkveld was disbarred and ordered to pay restitution.
14

15 In *In re Son*, SB-05-0173-D (2006), Son was disbarred for knowingly
16 abandoning his law practice and knowingly failing to perform services for which
17 his clients had paid. Son was charged with a six-count complaint and failed to
18 participate in the disciplinary process. The three aggravating factors were found
19 to have outweighed the one mitigating factor. *See also, In re Beskind*, SB 07-
20 0155-D (2007) (lawyer disbarred after he failed to perform work for which he
21 had been paid, failed to communicate with clients, failed to comply with orders
22 and requests from the State Bar and essentially abandoned his clients); *In re*
23
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1 *Rodgers*, SB 07-0128-D (2007) (lawyer disbarred after he abandoned his
2 practice, did not return files to clients, failed to respond to the State Bar's
3 inquiries and failed to participate in the formal discipline process).
4

5 Disbarment is a proportional sanction in the instant case.

6 **V. CONCLUSION**

7 In considering the sanction appropriate in this matter, the purpose of
8 discipline must be considered. The purpose of discipline is "to protect the public
9 from further acts by respondent, to deter others from similar conduct, and to
10 provide the public with a basis for continued confidence in the Bar and the
11 judicial system." *In re Hoover*, 155 Ariz. 192, 197, 745 P.2d 939, 944 (1987).
12
13

14 There is no question that the only appropriate sanction in this matter is
15 disbarment, and this Hearing Officer therefore recommends that Respondent be
16 disbarred. Additionally, the Respondent should pay the costs and expenses of the
17 State Bar, the Disciplinary Clerk, Disciplinary Commission and the Supreme
18 Court of Arizona in this matter. Further, the Hearing Officer recommends that
19 Respondent be ordered to make restitution to his former clients as set forth below;
20 and if Respondent is reinstated, he should be placed on probation for two years,
21 with the terms and conditions to be determined at the time of reinstatement.
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1 A. RESTITUTION

2 Respondent should make restitution to the clients listed below in the
3 following amounts:
4

5	Sandra and Julian Montoya ¹	\$4,467.25
6	Melvin Andraschko or Olde World Village Home Owner's	
7	Association	\$470.00
8	Myrtle Myers	\$1,750.00
9	Eric Wall ²	\$12,901.89
10	Norman Joslyn	\$2,000.00
11	Irene and Andriano Riesgo	\$750.00
12	Barney and Patricia Goldsbary ³	\$5,000.00
13	Beatrice Barrios	\$1,500.00
14	Clinton and Linda Macy	\$1,000.00
15	Richard Wells	\$2,500.00
16	Dorothy Larson	\$5,000.00

19
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21
22 ¹ Although it appears that Respondent did perform some work for the Montoyas, Respondent
23 failed to accomplish the goals of the representation, apparently through neglect. It is
24 appropriate, therefore, that the Montoya receive restitution for the full amount of fees paid to
25 Respondent.

² As with the Montoyas, although Respondent did perform some work, the work performed
for Mr. Wall was so lacking to make appropriate the disgorgement of the entire fee.

³ As above, the representation provided by Respondent to the Goldsbarys was of virtually no
value, and/or exceeded the authority he had been granted by the client. Disgorgement of the
entire fee is therefore appropriate.

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